
U.S. Department of Labor
Office of Administrative Law Judges
1111 20th Street, N.W.
Washington, D.C. 20036

Date: March 10, 1989

Case No.: 88-ERA-27

In the Matter of

BEN L. RIDINGS,
Complainant

v.

COMMONWEALTH EDISON,
Respondent

Before: JOEL R. WILLIAMS Administrative Law Judge

RECOMMENDED ORDER DISMISSING COMPLAINT

This matter arises under the Energy Reorganization Act of 1974, 42 U.S.C. § 5851 and Title 29 C.F.R. Part 24. The Complainant filed a complaint under said Act and regulations with the Secretary of labor on April 5, 1988. Following a fact-finding investigation, the Area Director, Employment Standards Administration, Wage and Hour Division, notified the Respondent on May 17, 1988, that their termination of the Complainant was in violation of the Act and that the required remedy was his reinstatement. The Respondent's telegram, requesting a hearing, was received in this office on May 20, 1988.

This case was assigned to me for a hearing. Upon review of the very limited file I noted that the Complainant's last known address was a post office box in Kingston, Tennessee. On May 27, 1988, I issued a Notice of Hearing setting this case for trial on June 14, 1988, in Knoxville, Tennessee. I noted that this location had been chosen pursuant to 20 C.F.R.

§ 24.5 (c) as it was within 75 miles of the Complainant's last knownaddress. However, I noted also that he could request a hearing in another vicinity, such as Chicago, Illinois, if it would be more convenient for the Complainant's witnesses. I included in the Notice of Hearing an order requiring the parties to furnish me within five days with a list of their respective proposed witnesses.

On June 1, 1988, counsel for the Respondent telephonically requested a continuance of the hearing to June 17, 1988, because of a prior judicial commitment on June 14, 1988. In order to apprise him promptly of the request for continuance I attempted to contact the Complainant at the only phone number for him in the Department of Labor records. This turned out to be his mother's phone. She indicated that the Complainant was no longer residing in Tennessee but might be working in Georgia. She was to attempt to contact him and have him call me.

On June 3. 1988. I received a telephone call from the Complainant who advised that he indeed was then living and working in Vidalia, Georgia. I explained that I needed to postpone the hearing. The Complainant was agreeable to this and indicated that he could benefit from even a longer postponement as he was seeking an attorney to represent him. I told him that he could waive the time limits under the Act and again noted that he could request a more convenient location. He was to let me know his decisions in these regards by June 6, 1988.

The Complainant called me on June 6, 1988, and advised that a waiver request had been mailed. He stated further that he was in the process on contacting an attorney he knew in illinois and that he was agreeable to have the hearing in the vicinity of Chicago. Subsequently, I received the following communication, dated June 3, 1988, from the Complainant:

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> I come before you specifically and not generally. This is to notify your office to schedule the Request for Appeal of the part of Commonwealth Edison in the complaint Ridings v. Commonwealth Edison at the convenience of the Administrative Law Judge. It is my understanding that it is becoming very difficult to make all the necessary arrangements within the 90 day time frame and I wish to make myself available at the convenience of the court rather than mine. This appeal is an action on the part of Commonwealth Edison and not of the complainant. This notice is not to be used to grant jurisdiction to this court, it is simply notice that the court may schedule whatever hearing it wishes to review at the courts convenience.
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> Please excuse any violations in proceedings or format for I am a layman and simply trying to meet the requirements of the statute.

On June 8, 1988, I issued the following Order of Continuance:

> Pursuant to oral orders conveyed during the telephonic communications with the parties, the hearing scheduled in this matter for June 14, 1988 is continued until further notice. Notice of the new date, time and location of the hearing will be issued. Although it is understood that the Complainant has waived the time limits under the Act and regulations, the new hearing will be scheduled as soon as practicable. Also pursuant to the Complainant's agreement, the same will be held in the vicinity of Chicago, Illinois.

The Respondents furnished a list of their witnesses on June 10, 1988.

On June 14, 1988, I issued a Notice of Hearing rescheduling the trial on July 11, 1988, at the United States Tax Court in Chicago, Illinois. The secretary of George Mueller, Esquire, contacted my office on June 23, 1988, and advised that Mr. Mueller had been retained to represent the Complainant. She inquired as to whether a hearing date had been set. A copy of the hearing notice was forwarded to Mr.

Mueller. Thereafter, a telephonic conference was held with counsel on July 5, 1988, at which time Complainant was granted a continuance in order to afford Mr. Mueller additional time to prepare.

Pursuant to agreement of counsel, September 26, 1988, was selected as the new hearing date. Also, at my initiative, Ottawa, Illinois , was selected as the new hearing site. This was on the basis of the representation of counsel for the parties that their respective witnesses resided in said locality.[1] Accordingly, a Notice of Rescheduled Hearing was issued on July 22, 1988, setting the case for September 26, 1988, at 11:00 a.m. at the LaSalle County Courthouse, Ottawa, Illinois.

During the week of August 22, 1988, I attempted to make lodging reservations in the vicinity of Ottawa. I learned that none were available on or about september 26, 1988, in Ottawa or neighboring LaSalle because a farming exposition was being held in the area at that time. I assumed that if any one else involved in the case needed lodging, he or she would have a similar problem. Consequently, after notifying counsel by telephone of my intent to do so and after hearing no objection, I issued a Notice of Change of Location of Hearing of August 25, 1988, setting the trial at the Federal Trade Commission hearing room in Chicago, Illinois.

On September 6, 1988, I received the following letter, dated September 1, 1988, from Mr. Mueller:

> I recently received Notice that the hearing site in the above-referenced matter has been transferred from Ottawa, Illinois to Chicago, Illinois. My client objects to this transfer, and indicates that he will not waive his right to have the hearing take place within 75 miles of his home. He presently resides in Vidalia, Georgia, and it

> appears to me that the closest major urban area would be Knoxville, Tennessee. This transfer would, of course, require substitute counsel to enter his appearance on Mr. Ridings' behalf, so that I imagine there will be a further continuance required in the matter.

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Upon receipt of the above I arranged for a telephone conference with counsel for the parties. I informed Mr. Mueller that his client had indeed waived any right he may have to a 75 mile limit and that he had no basis to complain at this late date. Mr. Mueller proceeded to represent to me that his client primarily had a problem with the change of location from Ottawa to Chicago. He stated that the Complainant's witnesses, who were now living elsewhere, could be accommodated without cost at friends' homes in Ottawa whereas hotel costs in Chicago would have to be reimbursed by the Complainant. Counsel for the Employer indicated that the nonavailability of lodging in the near vicinity of Ottawa would create no problem as their witnesses lived in the area and counsel could readily commute from Chicago. Mr. Mueller suggested that I might be able to obtain lodging in Morris, Illinois, about 25 miles from Ottawa. I was successful in doing so and immediately notified Mr. Mueller's office by telephone that the hearing location would be changed back to Ottawa. A notice to this effect was issued on September 8, 1988.

Also discussed during pre-hearing telephonic conferences was the Complainant's failure to furnish a witness list and to respond to the Respondent's June 23, 1988 Request for Production of Documents. Mr. Mueller indicated that his client had not yet furnished him with such information and that he would attempt to expedite a responses.

On September 21, 1988, the Wednesday before the scheduled Monday hearing, I received the following from Mr. Mueller, which had been dated and mailed on September 19, 1988:

> Enclosed please find my Motion for Leave to withdraw my Appearance in the above-referenced matter. The Motion speaks for itself, and in light of recent conference we have had about hearing locations and discovery compliance, it should come as no surprise.
> Mr. Ridings has indicated to me that he will contact you directly to seek a continuance in order to secure new counsel and to seek removal of the case from Illinois.

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> As Mr. Ridings has indicated he will not be present to proceed on September 26, I am assuming that there will be no need for me to be present at that time.
> Please let me know immediately if there is any problem in granting leave to me to withdraw my appearance.
> Mr. Mueller's motion follows: Now comes GEORGE MUELLER, Attorney at Law, and moves for leave to withdraw his appearance on behalf of BEN L. RIDINGS, and in support therefore, states as follows:

1. That on 9-19-88 in a telephone conference with the Complainant, BEN L. RIDINGS, your movant was discharged, effective immediately, as his attorney in the above-referenced matter. Said discharge is the culmination of a lengthy period during which Complainant and movant could not agree on the proper manner of handling this matter, and it had become increasingly apparent during said period that your movant could no longer effectively represent the complainant herein.

WHEREFORE, GEORGE MULLER, Attorney at Law, respectfully moves to withdraw his appearance on behalf of the Complainant herein.

Nothing was heard from the Complainant. On the afternoon of Friday September 26, 1988, I had my law clerk contacted Mr. Mueller and advised him that I had not heard from the Complainant and that I intended to go forward with the hearing on September 26, 1988. Mr. Mueller responded that he had informed his client of the necessity for requesting a continuance from me by telephone pursuant to 20 C.F.R. § 18.28. Mr. Mueller stated further that he would appear on September 26, 1988, to resubmit his motion to withdraw. My law clerk attempted also to contact the complainant at the only work number he had provided me, *i.e.*, his work number to relay the same message, *i.e.*, that I am anticipated holding a hearing on September 26. This was at 3:45 p.m. on September 23, 1988. She was told that he had left for the day.

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As a motion for continuance of the September 26, 1988 hearing had not been received or granted prior thereto, I traveled from Washington, D.C. to Ottawa, Illinois for the purpose of conducting the hearing on that date. The Complainant failed to appear at the appointed place and time. Mr. Mueller and counsel for the Respondent were present. Mr. Mueller offered a motion for continuance on behalf of the complainant which I denied on the record. His motion to withdraw as counsel was granted. The Employer moved that the complaint be dismissed. I held same in abeyance pending the issuance of a show cause order.

Upon my return to Washington, D.C., I found the following "Memo For Your Files," which had been received in the Office of Administrative Law Judges of September 28, 1988.[2]

I come before you specifically and not generally. this is to inform your office that I received your court order for change of venue that was taken on the court's own initiative, without motion from either party. The only consideration to have venue outside the 75 miles radius of me residence was that all of my witnesses at one tome lived in the state of Illinois. This is no longer the case and in fact, none of the witnesses I shall request to appear at this hearing, none live in the state of Illinois. This notice is to move the court to assign venue for the Request for Appeal of the part of Commonwealth Edison in the complaint Ridings v. Commonwealth Edison as directed by Energy Act, Title 42, USC, part 24.5(c) within 75 miles of complainant's residence, Rockwood, Tennessee. The closest

metropolitan area would be Knoxville, Tennessee. Therefore, upon receipt of the final order for venue by this court and so move the court to issue an order to allow for this requirement. Also, until further notice, please direct any notices to the above mentioned address.

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Please excuse any violations in proceedings or format for I am a layman and simply trying to meet the requirements of the statute.

As is considered the Complainant's motion to be out of time, I issued the following Order to Show Cause on October 12, 1988:

> The Claimant, having neither timely requested nor been granted a continuance or change of venue and having failed to appear for the hearing scheduled in this matter on September 26, 1988 on Ottawa, Illinois, is hereby Ordered to Show Cause within the next 10 days why his complaint under the Energy Reorganization Act should not be dismissed pursuant to § 24.5(e) (4) of the implementing regulations, 29 C.F.R. § 24.5(e) (4).

The Complainant filed responses under the dates of October 3, October 17, and November 8, 1988. His October 17 submission, being the most comprehensive, follows:

> I come before you specifically and not generally. In lieu of the fact the Rules of Civil Procedure do not specifically apply to administrative hearings I am not sure as to the form requirements for this response. Please excuse any violations in proceedings or format for I am a layman and simply trying to meet the requirements of the statute. It is without question I do have proper cause for my actions in this manner.
> Originally, Judge Williams scheduled the hearing on this matter to take place July 1988, in Ottawa, Illinois and during the course of due process many aspects have changed since the respondents Appealed the decision to the Department of Labor. The only consideration to have this hearing in Illinois was originally many of the witness lived in Illinois rather than close to my residence. However, over the course of time this is no longer true and in fact none of my witnesses live in Illinois any longer and there is absolutely no reason whatsoever to hold this hearing in Illinois. At no time has complainant's right to venue been "waived" and demand respondents prove such and allegation rather than state it as a fact.

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> It is true that complainant waived his right to time (in writing) which enumerates his demand for venue. The fact is venue has been properly questioned in a timely manner both by counsel and myself and to date I have received no answer as to why it is impossible to hold this hearing within 75 of my residence as the law requires. Jurisdiction of Venue can be questioned at any time up to during the actual hearing. Secondly, the courts own initiative, venue was changed from the courts own original assignment only to be placed at the home office of the

respondents and to date I have received no explanation why and I now specifically ask this administrative court to show cause specifically why the venue was changed without motion from either party to a location that would obviously benefit the respondents and explanation as to why this same court now has held a hearing in direct violation of federal statute and on all occasion without even so as to state its grounds to afford the complainant an opportunity to remedy or argue proper venue. The order to show cause states that complainant failed to timely request proper venue (in error) for this court has moved on complainant's motion for proper venue however the court failed to assign proper location of venue. Again, I am a layman, but I don't see any latitude for the court whatsoever defining the place of hearing as found in federal statute. I do notice where latitude is proper for other issues it is so noted in the statute. Secondly, I received a letter from counsel Mueller stating that he spoke with Judge Williams on September 23, 1988 about the venue issue and stated that he could not contact me. For the record, neither Judge Williams nor Attorney Mueller attempted to contact me at my work phone number and both Judge Williams, Attorney Mueller and the respondents counsel have contacted me at said number on more than one occasion. Also, I was at work on September 23, 1988 and September 26, 1988 and no one attempted to contact me then as well. This phone is located at an operating nuclear plant and is answered at all times during

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normal working hours. If necessary, a statement as to the fact not one message or call concerning this matter was received at said phone may be obtained from other employees at the nuclear site. Also, considering in lieu of the fact venue had changed three times in the month of September and federal statute dictates the location of the hearing in Knoxville, Tennessee, there was absolutely no reason for this citizen to think that such a hearing would take place. Also, considering that my retained attorney did appear and could argue the issue of proper venue, it cannot be said that I or my representative failed to attend hearing.
For the above mentioned reasons, I move this administrative court to deny the respondents motion to dismiss for default judgment and scheduled said hearing in accordance with federal statute within 75 miles of my residence, suggested Knoxville, Tennessee. Secondly, should this court grant the respondent's motion to dismiss for default judgment, I move the court to set the record certain as to why venue was originally moved, why venue was moved once again, state for the record my counsel did appear and why specifically I have failed to properly show cause in said order.

The record includes a copy of the letter written to the Complainant by Mr. Mueller on September 27, in which he states, in pertinent part:

> Pursuant to your directive to me of September 19, 1988, I moved to withdraw as your counsel of record in your pending Complaint against Commonwealth Edison Company. Contrary to your representation to me on September 19, 1988, that you would contact Judge Williams directly to make arrangements regarding the

hearing date, no such contact was made, and Judge Williams advised me by telephone on September 23, 1988, that he planned to appear in Ottawa as scheduled on September 26. Neither Judge Williams nor I were able to contact

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you by telephone on September 23, and all parties other than yourself did appear on September 26 at 11:00 A.M. in Ottawa, Illinois.

In a follow-up letter to the Complainant on October 26, 1988, Mr. Mueller wrote: I disagree with the contents of your letters to me of September 20, October 3, and October 19. In my opinion, you clearly had waived objection to venue in Ottawa, Illinois, you were warned that your failure to appear on September 26, might result in dismissal of your case, and most importantly, you represented to me that you would contact Judge Williams by phone before September 26 and arrange your own continuance. When I learned of September 23 that you had not called Judge Williams to explain the situation, I was the most surprised person in the world.

I. Venue

The "statute", *i.e.*, the Energy Reorganization Act of 1974, contains no provisions regarding the location of any hearing held thereunder. However, § 24.5(c) of the regulations promulgated by the Secretary of Labor under the Act, 20 C.F.R. § 24.5(c), does provide the following:

> Place of hearing. The hearing shall, *where possible*, be held at a place within 75 miles of the complainant's residence. (Emphasis added.)

By use of the qualifier, "where possible," the Secretary did allow for some discretion on the part of the administrative law judge as to the location of hearings under the Act. Because the 75 mile rule is not absolute requirement I believe that it is reasonable to interpret it in the light of Rule 18.27 of the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, U.S. Department of Labor (29 C.F.R. § 18.27(c)) which provides:

> Place of hearing. Unless otherwise required by statute or regulations, *due regard* shall be given to the *convenience* of the parties and *the witnesses* in selecting a place for the hearing. (Emphasis added.)

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Nevertheless, I do recognize that primary consideration must be given to the Complainant, who usually would be in the least favorable financial condition to absorb travel costs.

The term "residence" may in some cases have the same meaning as "domicile," *i.e.*, the place where a person has his true, fixed and *permanent* home to which he intends to return whenever he is absent. But, in other instances when used in a statue [or regulation] the term "residence" can also mean something less that "domicile" and involves physical presence in a place without requiring intent to make it one's home. *United States v. Stabler*, 169 F.2d 995, 998 (3rd Cir. 1948). As stated in *Brisenden v. Chamberlain*, 53 F. 307, 311 (C.C. D.C. S.C. 1892):

> One may seek a place for the purposes of pleasure, or business, or of health. If his intent be to remain it becomes his domicile; if his intent be to leave as soon as his purpose is accomplished, it is his residence. Perhaps the most satisfactory definition is that one is a resident of a place from which his departure is indefinite as to time, definite as to purpose; and for this purpose he has made the place his temporary home.

I must interpret "residence" as used in § 24.5(c) of the regulations as having such meaning. It makes no sense to me to assign a complainant's "domicile" as the priority hearing site when, in fact, he or she may actually be living and working, albeit on a temporary basis, many miles distant.

In any event, as § 24.5(c) was intended obviously for the benefit of a complainant, I see no reason why it cannot be waived by he or she.

I selected Knoxville, Tennessee as the site when I first scheduled this case for a hearing under the belief that the Complainant was actually "residing" in that vicinity. As it turned out, he was "residing" for the purpose of § 24.5(c) in the vicinity of Vidalia, Georgia. I would have readily rescheduled the matter for a hearing within 75 miles of

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Vidalia except for the Complainant's agreement that the Chicago, Illinois vicinity would be preferable. Indeed, the attorney whom he wished to retain practiced in that area. Acknowledgment of his waiver of § 24.5(c) was embodied in my Order of June 8, 1988, and no exception to the came was taken then or when the case was rescheduled initially in Chicago and then, at my suggestion with the ready concurrence of counsel for both parties, in Ottawa, Illinois. It was not until I changed the venue back to Chicago, which was not in anyway motivated by the location there of the Respondent's or its counsel's offices, that the Complainant objected. His counsel represented to me thereafter that the Complainant remained amenable to having the hearing in Illinois if it were held in Ottawa rather than Chicago. Although it was personally less convenient in terms of travel, I arranged immediately to revert to the Ottawa hearing site. This made the fifth time in this case that I had to reserve a courtroom, issue a notice of hearing and make travel arrangements.

I do not mean to imply in any way that a complainant should not be permitted to revoke his or her § 24.5(c) waiver. But I believe that such should be for valid, previously unforseen reasons and not for the purpose delaying the hearing process or harassing the opposing party. I believe, also, that such revocation should be made immediately upon learning of the changed circumstances and not at the eleventh hour.

Relocation of a complainant's witnesses would be a valid reason for his or her requesting a change of venue after previously agreeing to a hearing site. However, I am not convinced that it is a valid reason in this particular case. Although ordered to do so back in May 1988, the Complainant has never furnished me or permitted his counsel to furnish me with a list of his prospective witnesses. I have no idea to this day who these purported witnesses are, where they presently live and when they supposedly relocated from Ottawa. I was left with the impression by his then counsel that Ottawa was as convenient a location for the Complainant's witnesses as any of the other proposed sites. It has never been contended that the Complainant's personal travel to Ottawa would cause him undue hardship. It appears that holding the hearing in or near Ottawa was an understanding which Complainant has in retaining his counsel of first choice.

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I must conclude that the Complainant's last minute attempt to revoke his agreement as to the hearing site was not for a valid reason but was merely for the purpose of making it more difficult and expensive for the Respondent to transport its seven identified witnesses to the trial.

II. Continuance

Rule 18.28 of the Rules of Practice and Procedures (29 C.F.R. § 18.28) provides, if pertinent part:

> § 18.28 Continuances.
> (a) When granted. Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.
> (b) Time limit for requesting. Except for good cause arising thereafter, requests for continuances must be filed within fourteen (14) days prior to the date set for the hearing.
> (c) How filed. . . . *Any motions for continuances made within ten (10) days of the date of the scheduled proceeding shall, in addition to the written request, be telephonically conveyed to the administrative law judge or a member of his or her staff and to all other parties*. Motions for continuances, based on reasons not reasonably ascertainable prior thereto, may also be made on the record at calendar calls, prehearing conferences or hearing. (Emphasis added.)

Clearly, if the Complainant wanted a continuance of the September 27, 1988 hearing, it was his responsibility to contact me or my staff by telephone and request the same. This

requirement had been conveyed to him by his recently discharged attorney and, thus, the Complainant had direct knowledge of the same. Instead, he chose to request to the continuance in writing. Even so, he waited until the afternoon of the Thursday before the hearing before he posted this request by ordinary, first class mail. Certainly, he could not believe in this day and age that such mail would

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arrive, without doubt, in Washington, D.C. from Georgia and be delivered to me the next day, *i.e.*, the last business day prior to the scheduled hearing.

The Complainant disputes that both my law clerk and his attorney attempted to reach him by phone on the Friday afternoon prior to the hearing. I have both of their assurances that they did. In any event, this was of no consequence. As noted previously, it was not our responsibility to telephone him, it was his to telephone me. The message which my law clerk was to convey to him was that as I had neither been timely requested by him to continue the case nor granted any continuance I anticipated that he would be present at the courtroom and ready for trial in Ottawa on that following Monday. Not knowing whether the Complainant would or would not appear and not having been requested to nor having granted a continuance, I had no choice but to travel to Ottawa, Illinois from Washington, D.C. on the early morning of September 27, 1988. This turned out to be a complete waste of judicial time and government travel funds. Even assuming that the Complainant's behalf by his discharged counsel on the morning of September 27 was out of time pursuant to the last proviso of Rule 18.28(c) was the purported reasons were reasonably ascertainable prior thereto.

The Complainant seeks to have his actions excused on the basis that he is only a "lay person."[3] However, he had retained counsel who advised him of the proper method for seeking a postponement of the hearing. He chose to ignore competent legal advise. He can not now be heard to plead ignorance. Furthermore, I do not believe that you need to be a lawyer to know that you should inform a judge, that obviously would be travelling some distance for the hearing, of your intent not to appear. It is just a matter of courtesy.

III. Dismissal of Complaint

Section 24.5(e) (4) of the regulations (29 C.F.R. § 24.5(e) (4)) provides:

> (4) Dismissal of cause. (i) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim.

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> (A) Upon the failure of the complainant to comply her representative to attend a hearing without good cause;
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> (B) Upon the failure of the complainant to comply with a lawful order of the administrative law judge.

(ii) In any case where a dismissal of a claims, defense, or party is sought, the administrative law judge shall issue and order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim defense or party.

I am well aware that dismissal with prejudice is "the most severe sanction" that a court may apply and its use must be tempered by a *careful* exercise of judicial discretion. *Durham v. Florida East Coast Ry Co.*, 358 R. 2d 366, 368 (9th Cir. 1967). I believe that this is particularly true where, as here, the initial findings were in favor of the Complainant. The Secretary has held, in effect, that dismissal should not be ordered for a "simple mistake" with no suggestion of "willful or contumacious conduct." *Young v. CBI Services, Inc.*, 88-ERA-0008 (August 10, 1988).

However, I do not find the Complainant's failure to appear at the scheduled hearing without first having timely requested and received a continuance to be a "simple Mistake." Rather, I am convinced that the Complainant was attempting to manipulate and disrupt the course of this proceeding. I believe that he did so, not to make the hearing process more convenient for himself, but to make it inconvenient and more expensive for the Respondent. He has done so against the advice of his chosen counsel who impressed me as being knowledgeable and competent. His disruptive conduct is borne out further by his lack of cooperation in the discovery process.

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Rule 18.26 (20 C.F.R. § 18.26) provided that "[u]nless otherwise required by statute or regulations, hearings shall be conducted in conformance with the Administrative Procedure Act [A.P.A.], 5 U.S.C. 554." Both the A.P.A. and Rule 18.29 shall have all powers necessary to the conduct of fair and impartial hearings. In discharging this responsibility, I can not permit a party to dictate the course of the proceeding. I find that the Complainant attempt to do so constitutes contumacious conduct and warrants dismissal of his complaint, with prejudice.

ORDER

It is recommended that the complaint in this matter be DISMISSED with prejudice.

JOEL R. WILLIAMS
Administrative Law Judge

Washington, D.C.

JRW/jsp

[ENDNOTES]

[1] My own personal convenience would have better been served by retaining Chicago as the hearing site.

[2] The "memo" was dated August 20, 1988, but the envelope in which it was mailed bears a postmark of P.M. - September 12, 1988.

[3] Respondent's counsel represented on the record at the September 27 proceeding that the Complainant had indicated, in his resume that he had some legal education and the phraseology of his correspondence indicated this.